

REMARKS/ARGUMENTS

Applicant respectfully requests reconsideration of the present case in view of the following remarks.

Claims 35-51 are currently pending. Claims 35-51 are rejected. No claims have been amended. No claims have been cancelled. No claims have been added.

Claim Rejections

Under 35 U.S.C. §103(a)

Claims 35-46, 48, 50-51 were rejected under 35 U.S.C. §103(a) as being unpatentable over Van Der Graaf et al. Applicant respectfully traverses the rejection.

Claims 47 and 49 were rejected under 35 U.S.C. §103(a) as being unpatentable over Van Der Graaf et al in view of Bauman et al. Applicant respectfully traverses the rejection.

Claim 35 recites, “a multi-component dough comprising: a first unleavened outer dough layer having a thickness less than about 0.9 mm . . .”

The Office Action asserts that “the puff pastry layer in the Van der Graaf composite dough is the same as the first unleavened outer layer as claimed”, that “Van der Graaf does not disclose the thickness”, and that “varying thickness to obtain certain texture would have been an obvious matter of preference. (Office Action, p. 4). However, these assertions are incorrect.

Van der Graaf recites the thickness of the puff pastry dough. For example, Van der Graaf recites: “The final puff pastry dough was rolled to a sheet of about 11 mm thickness.” (col. 2 lines 53 to 55). Therefore, Van der Graaf discloses the thickness of the puff pastry layer. The thickness of the pastry layer disclosed in Van der Graaf is more than 10 times the required thickness of the claimed outer first unleavened layer. Therefore, the puff pastry layer disclosed in Van der Graaf does not disclose or teach the claimed first unleavened outer layer because the claimed first unleavened layer requires a thickness of less than about 0.9 mm and the puff pastry layer disclosed in Van der Graaf has a thickness of about 11 mm.

Further, varying the thickness of a pastry dough to a thickness of less than about 0.9 mm is not obvious as a matter of preference. The Office Action concedes that the typical thickness of an uncooked puff pastry layer is approximately 2 to 4 mm in thickness as recited in the Declaration made by Mr. David C. Rettey. (Office Action, p. 4 (“While the typical thickness is 2-4mm . . .”). As illustrated in Van der Graff (rolled uncooked puff pastry dough is about 11

mm thickness), the Declaration of David C. Retzey (uncooked puff pastry layer is approximately 2 to 4 mm in thickness), and the provided Enriched Yeast Breads article (rolled out dough is about 3 mm thick) a puff pastry dough layer is typically about 2 to 4 mm in thickness. Therefore, there is no reason why a person of skill in the art would chose to create a puff pasty dough within the range as claimed. The only reason for utilizing a pastry dough at abnormal thickness is to obtain the claims of the Instant Application. Therefore, the combination of these elements as claimed in the Instant Application relies on impermissible hindsight.

At an absolute minimum, the Examiner has not explained why one of ordinary skill in the art would be able to conceive of utilizing a puff pastry dough outside of the typically thickness or conceive of utilizing a puff pastry dough as a first unleavened outer dough layer to provide a crispy and flaky crust outer layer in a multi-component dough without undue experimentation and impermissible hindsight. When the type of component chosen and the typical thickness of the chosen type of component are outside of the typical parameters, it is simply impossible to argue that the selection of an irregular component or puff pastry dough at an irregular thickness is obvious. Therefore, it would not be obvious as a matter of preference to form a puff pastry dough layer at a thickness of less than about 0.9 mm without the improper use of hindsight.

The Office Action has failed to establish that the cited references teach or suggest the claims of the Instant Application. Accordingly, in view of the forgoing differences, Applicants respectfully submit the Office Action has failed to establish a *prima facie* case of obviousness. Withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the foregoing remarks, all pending claims are believed to be allowable and the application is in condition for allowance. Therefore, a Notice of Allowance is respectfully requested. If the Examiner believes a telephone conference would advance the prosecution of this application or if the Examiner should have any further issues regarding this application, the Examiner is invited to contact the undersigned attorney for the applicants at the telephone number provided below.

Respectfully submitted,

MERCHANT & GOULD P.C.

DATE: December 12, 2008



Marianne R. Timm
Registration No. 58,085
402.344.3000

23552

PATENT TRADEMARK OFFICE